IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CRIMINAL REVISION APPLICATION NO. 220 OF 1997

Vinayak Shankar Pawar
Presently in Centeral Prison
Yerwada, Pune) ..Petitioner
V/s
State of Maharashtra ..Respondent.

Mrs. Revati Mohite-Dere, Advocate for the petitioenr
Mrs. M.H. Mhatre, APP for State.

CORAM : J.H. BHATIA, J.

DATE : 7TH FEBRUARY, 2007.

ORAL JUDGMENT

1. Heard Mrs. Mohite-Dere, learned Counsel for the applicant and Mrs. M.H. Mhatre, learned APP. Perused record and proceeding.

2. The present applicant along with his aunt was prosecuted in Regular Criminal Case No 96/1991 for the offence punishable under Section 498-A, 504 r/w 34 Indian Penal Code in the Court of J.M.F.C. Ghodnadi, District Pune. After trial aunt was acquitted by the trial Court. The applicant was convicted for the offence punishable under Section 498-A and was sentenced

to undergo S.I. for six months and to pay fine of Rs. 700/-. The appeal preferred by the applicant against conviction also came to be dismissed on 30th September, 1997. In the present revision application, he has challenged his conviction and sentence.

3. Shobha Vinayak Pawar, the complainant, was the first wife of the present applicant. They were married some time in 1984-85 and after marriage Shobha lived with the complainant. At the time of marriage her parents had provided one tola gold, wrist watch, utensils, wearing apparels and cash of Rs. 10,000/-. For some time, she was treated well. But thereafter repeatedly she was being harassed and tortured mainly on the ground that she could not bear child. She was taunted as ennuch and sterile (Wanz). She was repeatedly driven out from the house and every time the matter was sorted out. On 23/9/1991 she was severely ill-treated by her husband. She also came to know that the present applicant had entered into second marriage and he also brought second wife in his house. After getting that information on 23/9/1991 she lodged complaint with the police. On behalf of prosecution P.W.1 Shobha, her father P.W.2 Kisan and her relative

P.W.3 Bhanudas, and P.W.4, who was investigating officer examined. The witnesses were examined and cross-examined at length. They could not be shattered and the trial Court relied upon the testimony of Shobha and her relatives to come to the conclusion that she was subjected to cruelty by her husband.

4. After going through the evidence and the judgments rendered by the Courts below, I find no illegality, irregularity or impropriety in the order of conviction. Learned Counsel for the applicant prays that period of more than 15 years have passed after the incident. The husband and wife lived together for about 6 to 7 years prior to lodging of the report. Due to the lapse of long period, now the applicant is a middle aged person and no purpose will be served, if he is directed to undergo simple imprisonment. Record reveals that after dismissal of appeal he was taken in custody on 30th September, 1997 and was released on bail on 14th October, 1997. Thus, he was in jail for about 15 days in this matter. The learned Counsel for the applicant states that the applicant is willing to pay compensation to the complainant and the sentence of imprisonment may be reduced to as already undergone. In support of her

contention that even by maintaining conviction, in the revision sentence may be reduced by the revisional Court. She relied upon **Shaymrao Vishnu Patil V/s State of Maharashtra and another, 1998(2) Mh.L.J.851** rendered by Division Bench of this Court. The Revisional Court has all the powers of the trial court, as well as appellate courts in respect of sentence and also in awarding compensation in view of provisions of Section 357 (4) of Cr.P.C. The learned APP has no objection to reduce the sentence and imprisonment and to award compensation. It may be noted that the order of compensation can be made either to be paid out of the fine amount or it may be separately quantified and directed to be paid, if fine does not form the part of the sentence. In the present case, the learned Magistrate had awarded fine of Rs. 700/- only. The power of J.M.F.C, trial Court in this case, to impose fine is limited to the extent of Rs. 5000/- in view of provisions of section 29(2) Cr.P.C. By increasing fine even to maximum limit, no purpose will be served. It will be in the interest of justice to modify the sentence, so that instead of imposing fine substantial compensation may be awarded. The learned Counsel for the applicant offers to pay compensation of Rs.25,000/-.

. For the aforesaid reasons revision application is partly allowed.

. The conviction is maintained. However, sentence awarded by the trial Court stands modified as follows:-

. The applicant/accused is hereby sentenced to undergo imprisonment as already undergone from 30th September, 1997 to 14th October, 1997 and is directed to pay compensation of Rs. 25,000/- to complainant-P.W.1 Shobha Vinayak Pawar within four weeks from this date.

. Compensation amount shall be deposited with the trial Court and thereafter amount shall be paid to complainant Shobha V. Pawar.

(J.H. BHATIA, J.)